

## Council Report

Meeting Date:	November 4, 2013
Agenda Item:	First reading, Amendment to Title 31.
Prepared By:	Greg Barnier, City Attorney


Background Information:	<p>The changes proposed in this revision to Title 31 are designed to provide more explanation of the changes to the Temporary Vendor License fee modified by the changes to title 31 earlier this year. In place of a “base” rate plus an amount for each square foot of vending area, the revised fee structure establishes five separate “bands” of vending area with a separate fee for each general size. While maintaining the smallest size fee at \$566.00 dollars, the largest areas will pay a reduced fee of \$1500.00, not the \$2480.00 called for under the earlier text. The proposed fee bands are:</p> <ul style="list-style-type: none"> <li>*For up to 100 square feet, the combined license fee and Special Sanitation charge is \$560.00.</li> <li>*For 101 to 400 square feet, the combined license fee and Special Sanitation charge is \$850.00.</li> <li>* For 401 to 800 square feet, the combined license fee and Special Sanitation charge is revised fee is \$1000.00.</li> <li>* For 801 to 1200 square feet, the combined license fee and Special Sanitation charge is \$1200.00.</li> <li>* For 1201 to 1500 square feet, the combined license fee and Special Sanitation charge is \$1500.00.</li> </ul> <p>In making the proposed changes, the Ordinance Committee seeks to demonstrate that the Council is giving consideration to some of the objections raised by Vendors complaining about the increase in the fee amount put in place by the Council for the 2014 Rally. The changes in the fee amounts are still designed, however, to ensure that those costs which the City Budget identifies as costs associated with hosting the Rally are paid by the temporary businesses and vendors that make their living serving the tourist business that comes to the community during the Rally period.</p>
Summary of Opposing Viewpoints	<p>Some might urge the Council to keep the current fee structure and not introduce any more change, even one that reduces the increase already in place for the largest vendors. Others might object to the 5 levels of fees as too complicated, or they might object that having property owners provide a map of the area on which vending activities will be located is an unfair</p>

	burden to place on a landowner that lease space to vendors.
In support of the recommendation	One of the primary purposes of these revisions to Title 31 is to respond to vendor and property owner complaints with a system that is easier to apply to a vendor without a scale map of each and every vending activity located on the property. The revisions proposed will also keep in place the reduction in fee for the smallest vendors, while making it easier for other vendors to estimate and budget for the cost of their fee before they arrive in Sturgis for the Rally. For the City, the mapping information will make planning for public services during the Rally easier. That should provide the City more detailed information beforehand about where the greatest areas of need for special sanitation services and law enforcement services are likely to be.
Analysis of opposing viewpoint	First, to leave the Ordinance unchanged leaves the City relying upon the text of an ordinance that sets rates higher but also is more complicated to calculate and enforce. Second, without the assistance of the location information provided by the property owner mapping, enforcement efforts to ensure that all licensees pay the correct amount will be more difficult. Third, planning for the most cost effective means to provide Rally sanitation and law enforcement services will be enhanced by having the information provided by the property map requirement.
Budget Impact:	The budget impact of this revised vendor fee schedule is expected to be generally revenue neutral. That is, if the number and type of Rally vendors in 2014 is the same as those that obtained licenses in 2013, the gross revenue generated should be roughly the same. The revised fee "bands" as proposed is expected to keep vendor license inspection costs at 2013 levels or less. The associated overtime "budget" for the staff in the Finance Office is expected to be at 2013 levels or slightly less.

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Recommendation:	The Ordinance Committee recommends that the first reading of these amendments to Title 31 be approved by the Council at the meeting on November 4, 2013.
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Approved:	 Daniel Ainslie, City Manager
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**ORDINANCE 2013-23**  
**AN ORDINANCE AMENDING TITLE 31– LICENSING OF TEMPORARY BUSINESSES**

**BE IT ORDAINED** by the Common Council of the City of Sturgis, Meade County, South Dakota that Title 31–Licensing of Temporary Businesses – Chapter 31.01 – General Provisions- 31.01.02 – Definitions; 31.01.03- Penalty; Chapters 31.02- Licensing and Regulation of Peddlers, Vendors, Solicitors, Professional People, Businesses and Trades- Section 31.02.03 - Licensing of Transient Professional People and Merchants- Section 31.02.03.01- Vendor License Required- 31.02.03.02- Application- 31.02.03.03- Fee and Duration of License- 31.02.03.5- Exemptions from the Temporary Vendor License Fee- 31.02.03.7 Required Documentation of Sales Activities is amended to read as follows:

**TITLE 31**  
**LICENSING OF TEMPORARY BUSINESSES**

**CHAPTERS:**

31.01: General Provisions

31.02: Licensing and Regulation of Peddlers, Vendors, Solicitors, Professional People, Businesses and Trades

**CHAPTER 31.01**  
**GENERAL PROVISIONS**

**SECTIONS:**

31.01.01: Scope and Purpose

31.01.02: Definitions

31.01.03: Penalty

**31.01.01: SCOPE AND PURPOSE**

The purpose of Title 31 is to regulate the licensing of people who do not have a permanent business within the City of Sturgis who wish to do business within the City of Sturgis for a temporary period of time.

**31.01.02: DEFINITIONS**

**VENDING AREA:** The area containing vending and all vending related activities, including all the area occupied by a retail area, equipment, inventory, transportation equipment and related infrastructure.

**31.01.03: PENALTY**

A violation of this ordinance shall be punishable by a civil penalty of 80% of the combined cost of a Temporary Vendor License and the Special Sanitation Fee, plus a separate administrative fee of \$75.00, to be paid before the Temporary Vendor License can be issued. To avoid additional civil penalty fees for each separate day of operation violation of this ordinance, the vender shall be required to obtain a valid Temporary Vendors License from the City Finance Office within 12 hours of the issuance of the Citation. No right to appeal this penalty to the City Council shall exist until the full payment of the penalty assessed against the Temporary Vendor has been paid to the City and verified by the Finance Office. Any Temporary Vendor exercising the right to appeal this penalty provision may appear in person at the time of the public hearing before the Council, or may be represented by a licensed attorney. In addition to statements by the Temporary Vendor during

such public hearing, the Council shall consider and determine the credibility of any written material submitted to the Council in regard to the appeal prior to the close of the public hearing.

Any temporary vendor found to be operating without a Temporary Vendor License and Special Sanitation Fee twice within a 24 month period shall be prohibited from obtaining a Temporary Vendor License in the future unless the Temporary Vendor License application is accompanied by combined payment of the administrative penalty and administrative fee set forth in the preceding paragraph, for each separate violation of this ordinance.

Any person or entity who is required to obtain a Temporary Vendor License and Special Sanitation Fee and who knowingly allows an unlicensed vendor to conduct or engage in business on property they own or which is subject to their control shall be prohibited from obtaining a Temporary Vendor License for a period of 400 days after the date of violation.

In addition to the civil penalty and administrative fee set forth above, a violation of this Title is a Class 2 Misdemeanor, punishable by the maximum punishment set forth by the laws of the State of South Dakota pursuant to SDCL 22-6-2.

In addition, any violation of the provisions of this Title may result in the revocation and/or suspension of any license issued pursuant to any Section of this Title.

### **31.02.02: PEDDLING IN PARKS**

It shall be unlawful for any peddler or other person excepting a person occupying a portion of the park under a valid concession agreement to sell or offer to sell, to any person within any municipal park of the City, any goods, wares, merchandise, books, pictures, novelties, souvenirs or trinkets or any other article of commerce and trade, including goods of his own production or manufacture.

### **31.02.03: LICENSING OF TRANSIENT PROFESSIONAL PEOPLE AND MERCHANTS**

#### **31.02.03.01 Vendor License Required**

Any firm, person, or corporation which intends to operate a temporary business within the corporate limits of the City of Sturgis in conjunction with an event of more than four (4) consecutive days within any ~~ten (10) twelve (12)~~ day time span shall be required to purchase a vendor license for each structure, stand, tent, vehicle, booth, location or place which is used by such merchant for the sale or distribution of goods. The person so engaged shall not be relieved from the provisions of this Section by reason of association with any local operating business, dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant, auctioneer or business.

The vendor license must be posted in each individual vendor location during operation.

#### **31.02.03.02 Application**

To obtain a license, a vendor shall file, in the office of the City Finance Officer, a verified application stating his or her name, and residence, description and identification of the place

in which he or she proposes to do business, dates of operation, name, address, phone number and e-mail address of property owner where business will take place and, the description of the goods he or she intends to handle. Applicant's South Dakota State sales tax number shall be included as part of the application, and any application submitted without a valid Sales Tax license number will not be processed for issuance of a temporary vendor license. A South Dakota State Department of Health license, when required for applicant's business, shall also be presented at the time of application.

#### 31.02.03.02 Property Vending Map

Starting January 1, 2014 all any property owners seeking to place temporary vendors licensed under this Title on property zoned GC-1, HS-1, RV (14 day only), Public Land or Fairgrounds, shall submit to the City Finance Office property 8 1/2 x 11 scale map of the potential vending area based on the parcel ID number for the subject property as established by the Meade County Equalization Office showing the dimensions of the potential vending area to be licensed and shall submit a map of the proposed vendor configuration, together with a filing fee of \$0.015 per square foot of the entire parcel. of the parcel in which vending will occur. After April 1 of each year, the vending parcel scale map filing fee shall increase to \$0.02 per square foot of the entire parcel, and after June 30 the potential vending area scale map filing fee shall be \$0.025 per square foot of the entire parcel.

Each applicant for a temporary vendor license shall submit a file-stamped copy of a scale map for the property parcel upon which the applicant proposes to operate if licensed. proposed to this map, The applicant shall include with the application material written confirmation that the property owner, a designated representative of the owner as on file with the City Finance Office, knows the applicant is seeking a temporary vendor license to operate on a parcel owned by the property owner. n acknowledged by the property owner or his/her representative, along with the temporary vendor permit application. The file stamped map copy map submitted by the applicant temporary vendor shall indicate show the dimensions and location of the area applicant seeks to have licensed for temporary vending. proposed the vendor area location.

#### 31.02.03.04 Fee and Duration of License

- A) A temporary business shall pay a Temporary Vendor License fee based on location and size of the overall vending area as set forth below together with the and a Special Sanitation Fee at the rate established and required by Title 11 of Sturgis City Ordinances for each twelve (12) ten (10) consecutive day period, or portion thereof, in any calendar year. The combined fee shall be paid at the Finance Office at the time the application is submitted for approval. The Finance Officer shall note on the license the time period for which it is effective. A business may purchase only two (2) vendor licenses per location per twelve (12) month period.
- B) The total required payment for the temporary vendor fee and special sanitation fee is as follows:
1. Vending area of 100 square feet or less, \$560.00
  2. Vending area of 101 to 400 square feet, \$850.00
  3. Vending area of 401 to 800 square feet, \$1000.00
  4. Vending area of 801 to 1200 square feet or less, \$1200.00
  5. Vending area of more than 1200 square feet, \$1500.00

Each vending area separated by a distance of three (3) feet or more from another vending area shall be subject to a separate license fee.

#### 31.02.03.05 Issuance

On filing the application and payment of the fee described in this section, the Finance Officer shall issue a license to the applicant to do business at a place described in the application and for the time for which the license fee has been paid in advance. Any applicant that has had their license issued who subsequently changes location and submits an amended application to show that change shall be charged a supplemental administrative fee of \$100.00 to obtain an amended license. Any vendor that changes location without obtaining an amended license as provided herein shall be subject to the penalty provisions set forth at section 31.01.03 of this Ordinance. This supplemental administrative fee shall also apply to organizations which are exempt from the Temporary Vendor License fee but are subject to the Special Sanitation fee imposed by ordinance 11.03.21.

31.02.03.06 Exemptions from the Temporary Vendor License Fee: All Sale, display, marketing or similar activities that are not specifically described within the following definitions shall not qualify for an exemption from the Temporary Vendor License fee.

A) Sales where the applicant has demonstrated by verifiable documentation that the proceeds are to be used exclusively for religious, charitable or benevolent purposes. Written proof of such religious, charitable, or benevolent non-profit status as declared by the IRS (i.e. 501(c) (3) documentation) and compliance with the notice provisions of SDCL 22-25-25(6) when required, must be presented when the application is submitted.

B) Sales to wholesale or retail merchants, by sample, for future delivery made by representatives or established wholesalers or manufacturers.

C) The sales of fruits, vegetables or farm or garden products in their natural state.

D) Sales by youth age 15 years and under, selling lemonade and like items and incidentals thereto from property from which they reside, shall be exempt from the Temporary Vendor License and Special Sanitation fees.

E) Parking lots on private property, when Vendor License application states that parking of vehicles is the only sales or marketing activity to be conducted on the premises identified in the Vendor application, shall be exempt from the Temporary Vendor License and Special Sanitation fees.

#### 31.02.03.07 Refund Fee for Transient Merchant License

The City of Sturgis is hereby authorized to refund up to 50% of a Temporary Vendor License fee, provided that written notice from the applicant requesting that the license be cancelled is received at the City Finance Office ten (10) days prior to the official start day of the event.

### 31.02.03.08 Required Documentation of Sales Activities

It is the responsibility of the Transient Merchant to record the amount of sale and applicable sales tax at the point of sale immediately upon completion of the sales transaction. Evidence of this recording shall be provided to representatives of the South Dakota Department of Revenue or the City of Sturgis upon request. Transient Merchants shall be required to provide complete sales records to the City of Sturgis upon request. A violation of this provision shall follow the penalties described in Section 31.01.03.

Dated this \_\_\_\_\_ day of November, 2013.

CITY OF STURGIS

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Mark Carstensen, Mayor

ATTEST:

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Fay Bueno  
Finance Officer

First reading:  
Second reading:  
Adopted:  
Published:  
Effective: